

REPORTER'S RECORD
VOLUME 33 OF 59 VOLUMES
TRIAL COURT CAUSE NO. 08CR0333
COURT OF CRIMINAL APPEALS CAUSE NO. AP-78,525

4
5
6 TRAVIS JAMES MULLIS, * IN THE DISTRICT COURT
7 APPELLANT *
8 VS. * GALVESTON COUNTY, TEXAS
9 THE STATE OF TEXAS, *
10 APPEELEE * 122ND JUDICIAL DISTRICT

FILED IN
COURT OF CRIMINAL APPEALS

OCT 27 2011

Louise Pearson, Clerk

21 On the 21st day of March, 2011, the following
22 proceedings came on to be heard in the above-entitled
23 and numbered cause before the Honorable John Ellisor,
24 Judge presiding, held in Galveston County, Texas;
25 Proceedings reported by machine shorthand.

ORIGINAL

1 A P P E A R A N C E S

2 FOR THE STATE OF TEXAS:

3 Mr. B. Lyn McClellan
4 Special Prosecutor
5 SBOT: 13396100
6 Ms. Donna W. Cameron
7 First Assistant District Attorney
8 SBOT: 03675050
9 Ms. Kayla M. Allen
10 Assistant District Attorney
11 SBOT: 24043530
12 Galveston County District Attorney's Office
13 Galveston County Justice Center
14 600 59th Street, Suite 3305
15 Galveston, Texas 77551
16 Phone: 409.766.2355
17 Fax: 409.766.2290

18

19 FOR THE DEFENDANT:

20 Mr. Robert K. Loper
21 SBOT: 12562300
22 LOPER LAW
23 111 W. 15th Street
24 Houston, Texas 77008
25 Phone: 713.880.9000
Fax: 713.869.9912

26 - AND -

27 Mr. Gerald E. Bourque
28 SBOT: 02716500
29 ATTORNEY AT LAW
30 24 Waterway Ave. Suite 660
31 The Woodlands, Texas 77380
32 Phone: 713.862.7766
33 Fax: 713.813.0321

34

35

36

37

1	VOLUME 33
2	CHRONOLOGICAL INDEX
3	
4	JURY CHARGE CONFERENCE..... 4
5	MOTION FOR MISTRIAL..... 9
6	HEARING ON JUROR MISCONDUCT..... 10
7	CLOSING ARGUMENT BY THE STATE..... 19
8	CLOSING ARGUMENT BY THE DEFENSE..... 26
9	FINAL CLOSING ARGUMENT BY THE STATE..... 51
10	JURY RETIRES TO DELIBERATE..... 72
11	VERDICT..... 75
12	JUDGMENT..... 80
13	REPORTER'S CERTIFICATE..... 81
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

- March 21, 2011

4

1 MARCH 21, 2011

2 (Open court, Defendant present, Jury not
3 present)4 THE COURT: I've been handed several
5 proposed jury instructions by the Defense. Has the
6 State had the opportunity to review these?

7 MR. MCCLELLAN: Yes, Your Honor.

8 THE COURT: Okay. Assuming the Defense
9 position is stated in their motions, what is the
10 State's response? First is Mr. Mullis's proposed jury
11 instructions.12 MR. MCCLELLAN: The State would ask that
13 that be declined, that the things they're asking for --
14 that they're entitled to are already included in the
15 jurors' charge.16 THE COURT: Okay. And the motion that the
17 jury be instructed on the definition of criminal acts
18 and violence.19 MR. MCCLELLAN: We'd ask that the motion
20 for the definition of criminal acts and violence, we'd
21 ask that that be denied -- it's not been defined by the
22 Courts -- and be given the everyday interpretation of
23 that definition. We ask that that be denied.24 THE COURT: The motion for order
25 prohibiting the use of, quote, "no sympathy," close

1 mental health evidence.

2 MR. MCCLELLAN: Sure this is not a jury
3 instruction but I assume it's just setting out the
4 reasons why they're asking for the things they're
5 asking for. If it is a jury instruction, then we ask
6 that it be denied.7 THE COURT: I have signed orders denying
8 each of the proposed jury additions from the Defense.
9 Have each of you had an opportunity to review the
10 proposed Charge of the Court on punishment that was
11 circulated late Friday?12 MR. MCCLELLAN: The State has, Your Honor.
13 MR. LOPER: We have, Your Honor.
14 THE COURT: Okay. Other than the things I
15 just denied, do you have any further objections to the
16 charge, Mr. Loper?

17 MR. LOPER: We don't, Your Honor.

18 THE COURT: From the State?

19 MR. MCCLELLAN: We have none, Your Honor.

20 THE COURT: All right.

21 The next issue to talk about: As you
22 will, recall Friday we had a juror that I interviewed
23 privately in chambers that admitted to me she had been
24 talking about the case with her fellow jurors before
25 the time and in direct violation of previously given

5

1 quote, instruction.

2 MR. MCCLELLAN: We ask that that be
3 denied. I'm pretty confident that the no sympathy
4 instruction was put in there initially to keep the
5 State from trying to seek sympathy for the deceased --
6 the instructions were put in there by the Courts or the
7 Legislature to keep the State from trying to seek
8 sympathy for the deceased as an answer to the verdict.
9 Now the Defense continually asks for it not to be in
10 there because they want to be able to ask for sympathy
11 for the Defendant. We'd ask that the instruction be
12 denied.13 THE COURT: All right. Motion for the
14 jury to be instructed on the consequences of the
15 failure to agree on the special issues.16 MR. MCCLELLAN: We would ask that that
17 also be denied. The Court's instructed them as to what
18 they're to do, how they're to answer the questions
19 based upon the law and the evidence and not -- they
20 don't need to be told what the result will be --
21 they're told all they need to be told concerning the
22 results that tend to answer against the State and
23 unanimous would be the position for death to occur.24 THE COURT: And the motion to properly
25 instruct jury at the penalty phase as to the use of

1 instructions. That being Ms. Monica Garner.

2 I did at the Defense's request dismiss her
3 as a juror and will be moving up the first alternate
4 which is Juror No. 13 which is Ms. Monroe.5 And I guess I would like some input from
6 the lawyers on exactly how to inform the jury of this
7 sequence, whether I should bring them out and tell them
8 that in open court or inform them through the bailiff.

9 Any thoughts from the State or Defense on that issue?

10 MR. MCCLELLAN: Just thinking off the top
11 of my head, Your Honor, I would think that it would be
12 proper to instruct them in open court and tell
13 Ms. Monroe she's now part of the jury and no longer an
14 alternate, assuming she knows she's been an alternate.
15 I don't know.16 THE COURT: I assume they've figured that
17 out. They know that from the guilt/innocence phase.

18 MR. MCCLELLAN: You're right.

19 THE COURT: So, I'm certain she does know.

20 MR. MCCLELLAN: And I -- you know, it's
21 kind of a moot point, I guess, at this juncture to tell
22 them not to discuss it outside and only when they're
23 deliberating because the next time they go back,
24 they're going to be deliberating. But they also need
25 -- and I'm sure the Court will instruct on that -- if

6

- March 21, 2011

<p>8</p> <p>1 they go to lunch or wherever they go, on bathroom 2 breaks or something like that, but they can't 3 deliberate two or three. They have to wait until 4 everybody's together to do any kind of deliberation.</p> <p>5 THE COURT: I think that's appropriate. I 6 think it's further appropriate that I instruct the 7 panel that anything that Ms. Garner may have said to 8 them regarding her opinions, testimony during 9 punishment should be disregarded.</p> <p>10 MR. MCCLELLAN: I'm thinking that maybe 11 the Court should inquire if anybody on the jury thinks 12 they have been so influenced by her they cannot 13 disregard what statement she may or may not have said, 14 that they inform the Court.</p> <p>15 THE COURT: I'm willing to ask that. 16 What's the Defense's position on these issues?</p> <p>17 MR. BOURQUE: I want to try to put it in 18 stages here. My first objection is going to be that 19 the first alternate being added was not allowed to be a 20 part of deliberations at Phase 1 and so she's coming in 21 as an alternate in Phase 2 after having not 22 participated in any way, shape, form or fashion in the 23 deliberations in Phase 1. We believe that's a denial 24 of the Defendant's Constitutional rights to due process 25 under the Fifth -- due process violation under the</p>	<p>1 So, that objection is overruled.</p> <p>2 MR. BOURQUE: Then the next thing that we 3 would request, Judge, if we could kind of put it in 4 chronological order.</p> <p>5 We recall that on either the first day of 6 evidence or the second day of evidence there was a lady 7 that approached the Bench, Lynette Briggs, indicated 8 that she had walked past a group of smokers and 9 couldn't really identify any individual person. She 10 said something vague like: They looked like they were 11 talking about a case. I didn't hear. I didn't listen 12 but I wanted to bring it to the Court's attention.</p> <p>13 Then we find out Thursday and Friday that 14 we have several smokers on our jury and we have one of 15 the smokers who's made some comments about how she 16 evaluated the case and she indicates to the Court that 17 she's having these conversations during smoke breaks. 18 And, so, we're in a situation where I think 19 realistically we can really assume going all the way 20 back to that Lynette Briggs' statement that we've got a 21 group of jurors who smoke and they would gather out to 22 smoke during breaks of the court and it was during that 23 period that at least one juror, Ms. Garner, was sharing 24 her thoughts, concepts and evaluations of the facts 25 throughout the case.</p>
<p>9</p> <p>1 Fifth and Fourteenth Amendments to the United States 2 Constitution and a denial of the Defendant's right to 3 effective assistance of counsel under the Sixth 4 Amendment of the U.S. Constitution. And finally an 8th 5 Amendment violation for cruel and unusual punishment. 6 That's that part. Now moving to the second problem.</p> <p>7 We would request, Judge, I don't mean to 8 be leaning down as a sign of disrespect --</p> <p>9 THE COURT: None taken. And if you want 10 me to take this in three components, I'm going --</p> <p>11 MR. BOURQUE: Could we do one first?</p> <p>12 THE COURT: Yes.</p> <p>13 MR. BOURQUE: Therefore, we'd ask for a 14 mistrial for adding the 13th juror to become the new 15 12.</p> <p>16 THE COURT: That motion for mistrial is 17 denied. The objection is overruled. We're dealing 18 with a statutory scheme that allows alternates to be 19 available throughout the whole trial and can come in at 20 any phase; during guilt/innocence, during punishment. 21 That juror has participated in the whole process 22 listening to the evidence at every stage and the 23 Legislature has provided that if for some reason a 24 juror becomes incapacitated and has to be removed, the 25 alternates are there to help even during deliberation.</p>	<p>11</p> <p>1 What I would ask the Court to do is to 2 bring each one of the individual smokers in our group, 3 identify who the smokers are, take them in chambers and 4 ask them specifically did you listen, did you tell her 5 to stop, and what did you say in addition? And if you 6 didn't say anything, did anybody else in the smoker's 7 group say anything to her. Because it can't -- this 8 thing couldn't have gone on for seven days without 9 somebody in that group either participating or lending 10 an ear and it's not simply talking about it that's not 11 the end of juror misconduct. That's the beginning.</p> <p>12 If we're in a situation where we had 13 jurors smoking every day listening to Ms. Garner and 14 not telling her, one, be quiet; two, listening to her 15 and, three, not bringing it to the Court's attention, 16 those are all juror misconduct activities. And we 17 believe they're such egregious in manner that it led to 18 all of the violations, the due process violations, the 19 effective assistance of counsel violations, the cruel 20 and unusual punishment violations.</p> <p>21 What they've done if they've all gone down 22 and talked about this case is they virtually did 23 survivors island. They all went downstairs, colluded 24 and conspired so they had their teamwork together so 25 that when they went back in the jury room -- and if you</p>

- March 21, 2011

12

1 remember, it's specifically important, they were given
2 a smoke break before they began deliberations. They
3 went out, they had their smoke break, and in about 15
4 minutes after they come back from the smoke break, they
5 got a verdict. Although it looks like an hour, it's
6 really about 15 minutes. And so it's just a horrible,
7 horrible impact on this client, Travis James Mullis.

8 So, what I would ask the Court to do is to
9 evaluate those smokers to find out what we have and
10 then if they have violated the rules, if they have
11 engaged in jury misconduct, the first thing I'd ask for
12 is a mistrial back to the beginning. Second request is
13 that you declare a mistrial in the punishment phase and
14 impose a life sentence without parole.

15 MR. MCCLELLAN: I oppose those sanctions.
16 If the Court sees the need to talk to each of the
17 jurors, I think the inquiry is this: Has what
18 happened, whatever it is that happened, affected their
19 ability to be fair and impartial and judge the evidence
20 on their own and reach their own verdict, individual
21 verdict? To try to bootstrap somebody talking to me
22 and me not saying shut up, call the Judge, do all these
23 things, which would be an unnatural reaction to do,
24 that means I have now done something wrong because
25 somebody came to me and said something or I felt, you

14

1 jury misconduct. They were participating in it if they
2 listened to it, if they participated in any way by not
3 saying you can't do this, this is a violation of the
4 Court's instructions, then they have engaged in juror
5 misconduct.

6 Yes, I agree, tattle telling is not easy
7 to do. But when you've been told here are the rules,
8 don't violate them, if anyone does violate them you
9 have to bring it to the Court's attention, that's juror
10 misconduct.

11 THE COURT: What we're going to do, I'm
12 going to go ahead and interview the identified
13 potential jurors that may have spoken to Ms. Garner,
14 see if there's anything there and, if so, we'll bring
15 that to the attention of the attorneys and get that on
16 the record.

17 I'll inform Ms. Monroe that she is now
18 Juror No. 8. And once those issues have been crossed,
19 then we'll reconvene and go forward with where we are
20 at that point. So, if y'all will bear with us, we'll
21 be in recess for probably 15, 20 minutes. Thank you.

22 (Recess taken)
23 (In chambers, Defendant not present)

24 THE COURT: As we discussed out in open
25 court, I called in four jurors and discussed the

13

1 know, okay, I hear what you're saying, that would not
2 be jury misconduct.

3 The inquiry that needs to be made, I would
4 suggest, is has every juror left, do they feel that
5 their ability to reach a fair and impartial verdict on
6 their own without the influence from anybody else would
7 be compromised by anything that's occurred. You have
8 to realize that 11 of the now 12 left have deliberated
9 on guilt and innocence, have talked about the case,
10 have done all these other things. And now to say at
11 this other stage to say that if they did something
12 wrong, they're now disqualified from all stages is just
13 way overreaching in the State's opinion.

14 THE COURT: Okay.

15 MR. BOURQUE: May I add one other thing?

16 THE COURT: You may.

17 MR. BOURQUE: Just in closing, yes, it is
18 unnatural to do a tattletale activity. However, the
19 Judge has instructed them if you see -- if you see
20 people violating these rules, you're to bring it to the
21 Court's attention.

22 So, if this has been going on for five
23 days or two days or even 45 minutes and it's not
24 brought to the Court's attention -- and it wasn't
25 brought to the Court's attention by any juror -- that's

15

1 matters with them. I spoke with Ms. Proehl, Mr. Holly,
2 Ms. Munroe and Ms. Lewis. The first three were
3 identified in the smokers group who had been going down
4 smoking with Monica Garner. Ms. Proehl said that she
5 had heard the witness (sic) make statements in the jury
6 room and in the smoker's area, that she had been asked
7 to stop, that she personally asked her to stop talking
8 about it in the smokers area. And then I learned from
9 another juror that others had been saying -- if anyone
10 started to bring up something, wait a minute. We can't
11 talk about that. So, those instructions have been
12 followed.

13 I then went through the questions and
14 asked her, "Did anything you hear, has it influenced
15 you to the point that would affect your verdict that
16 we're about to be considering" and she said, "Oh, no.
17 I've invested too much time and energy and effort into
18 this case and I've kept an open mind. I would not let
19 anything she said influence me."

20 I then spoke to Mr. Holly. He said that
21 he was the sole male down there and the women tended to
22 congregate and talk and he got kind of left out of the
23 conversations. But he's the one that said if anything
24 started to come up at any point in the jury room,
25 someone would always ask them to stop, the Judge has

<p style="text-align: right;">16</p> <p>1 told us not to do that. So, he was asked those same 2 questions: Did anything that started to be said or you 3 did hear, would that influence you in your verdict in 4 any way" and he said, "No."</p> <p>5 The next person I spoke to was Ms. Munroe, 6 who was Juror No. 13, our first alternate. She said 7 that Ms. Garner had made those statements, that she had 8 told them she already made up her mind, that she 9 appeared very opinionated and jaded and that they, 10 again, would tell her to stop and she had not been 11 influenced. So, nothing had been said that would 12 influence her, that she has not made up her mind and 13 she is willing to continue to evaluate the evidence and 14 make a fair judgment.</p> <p>15 I called in Ms. Lewis and the reason I did 16 is because Ms. Proehl identified the person she thought 17 was in the smokers area was Dolores. Dolores Lewis is 18 not one of the smokers. So, I think she is mistaken. 19 I think that was really Monica Garner she was talking 20 about.</p> <p>21 But I did call Ms. Lewis and she was 22 clueless. She did not hear anybody talk about it and 23 has not made up her mind. She said, "I haven't heard 24 anything but even if I had, I'm committed to this 25 process and keeping an open mind."</p>	<p style="text-align: right;">18</p> <p>1 based on the evidence they've heard in court and not 2 from any other source. Okay?</p> <p>3 MR. LOPER: Thank you, Judge. 4 MS. CAMERON: Very good.</p> <p>5 THE COURT: All right. Well, we'll go 6 back out and reconvene. In a couple of minutes I'll 7 call the jury out, read the charge and we'll get 8 started. We're still looking at about an hour per 9 side. If you get to the end of that time and if 10 there's still something you need to say, let me know.</p> <p>11 (Open court, Defendant present, jury 12 present)</p> <p>13 THE COURT: All right. Ladies and 14 gentlemen, are you ready to proceed?</p> <p>15 MS. CAMERON: We are, Your Honor. 16 MR. LOPER: Yes, sir.</p> <p>17 THE COURT: Carl, bring them out, please. 18 (Open court, Defendant present, Jury 19 present)</p> <p>20 THE COURT: Please be seated. Good 21 morning, ladies and gentlemen. All right. For the 22 record, it is March 21st, 2011, at 9:44 a.m. I 23 appreciate your patience in getting the process started 24 this morning.</p> <p>25 As we discussed earlier, I'm about to read</p> <p style="text-align: right;">17</p> <p>1 MR. MCCLELLAN: When you first started, 2 you said "the witness." I'm assuming you're referring 3 to the juror.</p> <p>4 THE COURT: I meant "the jurors," if I 5 said witness. I talked to four jurors who were not 6 under oath. They were not witnesses, but I did 7 interview them here.</p> <p>8 I did ask them to keep their conversations 9 with me confidential and not to share that with the 10 other jurors. I did inform Ms. Munroe that she was now 11 going to be Panel Member No. 8, moving up to take Ms. 12 Garner's place. All right.</p> <p>13 MR. BOURQUE: So -- I'm sorry.</p> <p>14 THE COURT: Go ahead.</p> <p>15 MR. BOURQUE: I was just going to ask you 16 if the motions for mistrial we asked for are overruled.</p> <p>17 THE COURT: They are at this point. I am 18 confident that the jury instructions, say, for 19 Ms. Garner were followed, that the other jurors when 20 they heard her speaking of it or others that might have 21 started to say something were asked to stop in 22 compliance with the instructions, that these jurors 23 appear to be compliant with the instructions, that they 24 appear to be open-minded to both sides and that they're 25 going to try to render a true and just verdict just</p> <p style="text-align: right;">19</p> <p>1 the Charge of the Court on punishment. Once that's 2 done both the State and Defense will have the 3 opportunity to present their closing summation and 4 arguments.</p> <p>5 Is the State ready to go forward at this 6 time?</p> <p>7 MS. CAMERON: We are, Your Honor.</p> <p>8 THE COURT: Is the Defense?</p> <p>9 MR. LOPER: Defense is ready, Your Honor.</p> <p>10 (The Court reads the Charge of the Court 11 on punishment in Cause No. 08CR0833)</p> <p>12 THE COURT: All right. Ladies and 13 gentlemen, that is the Charge of the Court on 14 punishment. At this time I'll recognize the attorneys 15 for the State of Texas for a closing argument.</p> <p>16 MS. CAMERON: Thank you, Your Honor.</p> <p>17 STATE'S CLOSING ARGUMENT</p> <p>18 May it please the Court, opposing counsel, 19 ladies and gentlemen of the jury.</p> <p>20 A trial, any criminal trial, should be a 21 search for the truth. And how is it that you know what 22 the truth is? It's because the witnesses and the 23 evidence are tested by both sides. Because only when 24 you know the truth is the answer to these special 25 issues easy. You've heard from a lot of witnesses and</p>
--	--

- March 21, 2011

<p style="text-align: center;">20</p> <p>1 you've heard from the facts of the case the horrendous, 2 the horrific facts of the case. And what does that 3 tell you? That tells you all you need to know about 4 answering these special issues.</p> <p>5 What kind of person -- what kind of person 6 commits this kind of horrific crime? What kind of 7 person gratifies his own sexual needs with his own 8 3-month-old son and then stomps on his head to death? 9 Listen to the testimony of Carolyn Entreken as she 10 spoke to you about the impact this crime has had on her 11 and her family.</p> <p>12 She said to you, "It is hard to believe 13 that there is such evil that exists" and maybe it's 14 just as simple as that, that the monster in this case 15 is not Grandma Gladys, that evil does exist, that the 16 monster is sitting right here in this courtroom and his 17 name is Travis Mullis.</p> <p>18 Everything that you have heard about 19 Travis Mullis should lead you to be able to answer 20 these special issues. I want to talk to you briefly 21 about Special Issue No. 1. And remember on voir dire 22 when we talked about what is society. Is society just 23 prison society? It's not defined that way in the 24 charge. Society means all of society.</p> <p>25 And, so, you have to look at what you know</p>	<p style="text-align: center;">22</p> <p>1 best medical and psychiatric care that anyone could 2 ever have. And what does that do?</p> <p>3 I would suggest to you that you-all know 4 more about Travis Mullis than any of the Defense 5 experts that spent their hours with him. You've seen 6 the real Travis Mullis. Travis Mullis sees people as 7 something to be used for his own needs, for his own 8 gratification, without caring about the consequences 9 and without accepting any responsibility. Everyone 10 else is to blame.</p> <p>11 So, in terms of thinking about the future 12 dangerousness of the Defendant, think about what we 13 know about Sheppard Pratt. Shepherd Pratt was a 14 structured lockdown facility much like a jail would be, 15 only it was very therapeutic trying to meet his needs. 16 They even gave him therapeutic horseback riding, 17 individual therapy, family therapy, group therapy. His 18 mother came every weekend.</p> <p>19 What does he do in that structured 20 environment? He assaults a female. He assaults a 21 female staff member, kicks her. He grooms and sexually 22 molests other residents. So, that's what he's like in 23 a controlled setting because he'll feign some kind of, 24 oh, I'm going to commit suicide. I'm the victim. And 25 then once he lures you in, he'll take advantage of you.</p>
<p style="text-align: center;">21</p> <p>1 about Travis Mullis in order to answer the question: 2 Do you believe beyond a reasonable doubt that he will 3 commit continuing acts of violence that will constitute 4 a continuing threat to society?</p> <p>5 And think about the evidence that you've 6 heard. The Defendant, Travis Mullis, has had homicidal 7 thoughts since he was 11 years old. Everyone that has 8 tried to reach out and give him some kind of support, 9 take him in, be a family to him, he has victimized. 10 Even Steven Barry, an adult man, is afraid of the 11 Defendant and he fears for his whole family because he 12 knows Travis Mullis assaulted his own grandmother, 13 Steven Barry's mother, a frail lady, Francis Barry; 14 sexually molested his daughter, the Defendant's own 15 cousin. What does he know about the Defendant?</p> <p>16 And you saw how brutally cross-examined he 17 was as if somehow he's not a loving uncle, not a 18 supportive uncle because at some point he said: Travis 19 Mullis is destroying people. Travis Mullis is violent. 20 Travis Mullis manipulates people. He's deceitful. He 21 uses people for his own gratification.</p> <p>22 And what do we know about all the efforts 23 that went into trying to fix the monster? He had a 24 mentor. He had a family that adopted him. He had an 25 adoptive mother that never gave up on him. He had the</p>	<p style="text-align: center;">23</p> <p>1 What do we also know about the Defendant 2 as far as when he's in the jail, when he's here in 3 Harris -- in Galveston County? What do we know about 4 him? He's creating a hit list of all the people that 5 have tried to reach out to him. Michele Duarte took 6 him in, gave him a place to live. Ann Mullis adopted 7 him and never abandoned him. His mentor, everybody 8 becomes on his hit list. And I would suggest to you 9 that he's sending a message when he puts up there 10 "Watch your back." Maybe that would have been some 11 good advice for Julio Hernandez, watch your back.</p> <p>12 And even the Defense's own expert witness, 13 when Dr. Katz was up here testifying -- and, you know, 14 I don't know if these experts have an agenda. I don't 15 know if they are just not seeing something important. 16 But, as he says, all of his things that are to benefit 17 Travis Mullis on cross-examination, what does he say? 18 Travis Mullis does not belong in society. You can't 19 fix him. You can't medicate him. There is no 20 medication. There is no treatment. There is nothing 21 you can do about the evil that he is. Call it an 22 anti-social personality, narcissistic, grandiose. He 23 can't be fixed.</p> <p>24 So, think about all of the evidence that 25 you've heard. And the facts alone of this case could</p>
FIRM NAME	

- March 21, 2011

<p style="text-align: right;">24</p> <p>1 tell you all you need to know about what kind of person 2 Travis Mullis is, just to create in everybody's mind 3 the most horrific crime that could be committed. So 4 horrific that if it wasn't an agenda when you heard 5 their psychiatrist testify from New York who spent 6 hours with him -- what did the Defendant do? What did 7 he tell you he did to Alijah?</p> <p>8 Well, he said that he got angry and upset 9 and the baby woke up and the baby started crying and he 10 went back and Travis Mullis was trying to console the 11 baby but he wouldn't stop crying; so, he lost it and he 12 killed him. I don't know if that doctor had an agenda 13 to hide or to keep something from you-all or it was 14 just too horrific, just too disgusting that only on 15 cross-examination from Mr. McClellan does he say, oh, 16 yeah, by the way -- and then you hear the truth because 17 it shocks the conscience. And I trust that when you go 18 back and you consider all of the evidence that you will 19 find unanimously beyond a reasonable doubt, beyond any 20 doubt that the Defendant constitutes a continuing 21 threat to society.</p> <p>22 I want to talk to you briefly about 23 Special Issue No. 2. What is militate or mitigate? 24 Militate means that it works for, that it should 25 influence you for the death sentence, that it's not</p>	<p>1 there is not sufficient mitigation to warrant life 2 without parole. The Defendant deserves the death 3 penalty for everything he's done, for every victim in 4 his life, for the grandchild that Carolyn Entreken will 5 never know, for a beautiful baby that was helpless at 6 the hands of a monster.</p> <p>7 Thank you.</p> <p>8 THE COURT: Mr. Loper, you may proceed.</p> <p>9 DEFENSE CLOSING ARGUMENT</p> <p>10 MR. LOPER: I don't know that I disagree 11 so much with the State's assertion that this young man 12 right here that you-all get a good look at is a 13 monster. I don't know that I disagree much with that. 14 But he's not much of a monster. And in the prison 15 society that you're going to send him to someday soon, 16 he's not a dangerous monster. He's not a dangerous 17 monster that should lead you to answer this first issue 18 "Yes." You found Travis Mullis guilty of this crime. 19 And for that he gets the death penalty. All you have 20 to decide now is whether this case and the evidence 21 that you've heard should lead you to the conclusion 22 that the Government should remove him from the earth.</p> <p>23 The State has won this lawsuit. Friday a 24 week ago they won the lawsuit and you now know and he 25 knows and everyone knows that the evidence that's been</p>
<p style="text-align: right;">25</p> <p>1 mitigation. And what do we know about the Defendant? 2 We know that the Defendant had a background that wasn't 3 perfect.</p> <p>4 How many people in our society have 5 perfect childhoods? How many people are out there that 6 have suffered abuse, physical abuse, emotional abuse, 7 whether or not it's Kendra Witherspoon or somebody that 8 you knew, someone that you grew up with, a family 9 member? But the Defendant made choices and the choices 10 that the Defendant made were always for Travis Mullis. 11 What does Travis Mullis want? So, he manipulates 12 people. Is there anything that you've heard that 13 lessens his moral blameworthiness with every choice 14 that he made with every benefit that was given to him 15 to try to institute some kind of morality to him, some 16 sense of responsibility?</p> <p>17 Travis Mullis is a user. He would use his 18 sister, he would use his brother, he would use anybody 19 to come in to manipulate you but you know better 20 because you know the facts. You know the truth about 21 Travis Mullis.</p> <p>22 What I'm going to ask you to do is to do 23 justice. There can't be justice without the proper 24 punishment, and the truth is all you need to make those 25 decisions. And I would ask you to say that unanimously</p>	<p>27</p> <p>1 presented to you the last three days of last week were 2 not designed to excuse his conduct. It was not a 3 defense as the State would have you look at. 4 Prosecutors always confuse mitigation with 5 excuses but it's not. It's to put it in perspective. 6 It's to give you an idea as the what's the appropriate 7 answer to these questions. It's what happened, how it 8 happened, how he came to be, what formed him, what 9 molded him, what you know about him and, frankly, 10 especially as to Issue No. 1, what he's done in the 11 last three years of his life, just not very dangerous, 12 leads you to make the decision as to what should be 13 done with him from this point forward. And I submit to 14 you if you look at all those things in a big picture 15 scheme, you will think that a life sentence is both 16 just and proper.</p> <p>17 As you know -- just a quick reference to 18 the jury charge which you will take back with you as 19 you did last time. You don't just go back and write 20 the word "life" or write the word "death" on a piece of 21 paper and bring it back to the courtroom. We spent a 22 lot of time talking with each one of you talking about 23 these questions. It has to be all 12 jurors to be 24 unanimous for a "Yes" answer on Issue No. 1. And if 25 ten of you decide that the answer to No. 1 should be</p>

28

1 "No," that's sufficient to answer that question.

2 I submit to you that from the evidence
3 that you heard, all 12 of you should vote "No" as to
4 Issue No. 1. The Court's Charge also tells you that if
5 that happens, your service is done. You may return to
6 the courtroom and hand that verdict to the bailiff.

7 It tells you that if you do get to
8 Question 2, the mitigation question, again all 12
9 jurors must answer "No" in order for that to be
10 correctly answered. Or if 10 of you decide that, yes,
11 that is sufficient mitigating evidence to warrant a
12 life sentence, that that's sufficient to answer that
13 question.

14 And as it's said and as we've all
15 discussed, it makes no difference what part of the
16 mitigating evidence convinces you. It could be his
17 prenatal days, gestation days, birthdays, surgery days,
18 abandonment days, sexual abuse days and anything else
19 that you might decide is appropriate.

20 You know, to be -- and we talked about
21 this: A fair and impartial juror in a case in order to
22 be able to sit on a capital murder jury and consider
23 these questions, a juror has to be able to give full
24 consideration to mitigating evidence. Talked to every
25 one of you. Every one of you said that you could.

29

1 It's interesting to me that to be a
2 prosecutor and ask a jury to sentence one of our fellow
3 citizens to death, you don't need to be because the
4 State of Texas in this case has chosen to attack Travis
5 Mullis in order to seek a death penalty for him on two
6 bases. Either, one, most of what happened to him
7 really didn't. You really didn't have as bad a mom as
8 you think. He didn't really have as bad an adopted dad
9 as you think he did. But if he did, it didn't really
10 affect him. Again, they look at it as an excuse and
11 it's not and that's not what the law is.

12 It's interesting to me that when we were
13 picking this jury -- not for every one of you and I
14 know it was several of you and I think you'll remember
15 this -- but the State was giving examples to you to
16 think about in deciding what's this mitigating stuff.
17 I assume that this was something that was brand new to
18 most of you. One of the examples they gave was you
19 could decide that the Defendant on trial in a
20 hypothetical case is young and that could be
21 mitigating. And that's true. Jurors have returned
22 life sentences in this State --

23 MR. MCCLELLAN: I object to him telling
24 what other jurors may have done in this State on the
25 basis of some piece of evidence.

30

1 THE COURT: Ladies and gentlemen, I remind
2 you, as the charge says, you're only to consider the
3 evidence admitted in this case. Thank you. You may
4 continue.

5 MR. LOPER: Thank you, Judge.
6 Juries have made the decision on
7 mitigating evidence based on what they thought it was.
8 The State tendered that up to you, some of you, at voir
9 dire because they wanted you to think, well, yeah, that
10 it's one thing. And it is accurate. It can be one
11 thing. But it's funny that they use that as an example
12 to try to get you to understand that those are the
13 kinds of things that can be considered and now that
14 we're in trial and now that you've learned of the abuse
15 of Travis Mullis at the hands of his adoptive father,
16 Gary Mullis, that they want you to think, well, it
17 doesn't really matter who sexually abused the child as
18 long as they're too young enough to know that it
19 happened. That's kind of what they said.

20 You will recall that Dr. Mendel was
21 talking about the fact that a baby can recognize smell
22 and can recognize the sound of their mother or father
23 or their caretaker's voice at the age of three months.
24 Don't think for a minute what Gary Mullis did to Travis
25 did not affect him because, of course, it did.

31

1 Or I think the other tactic they might
2 have tried and may try is that, well, even if you have
3 one parent who's sexually abusing you, if you have
4 another parent who isn't, then it's okay. In this case
5 it would have been Ann Mullis. That's not enough to
6 make up.

7 And here's another thing: If it had
8 turned out that Travis Mullis, when he walked into the
9 Philadelphia Police Department, admitted what he did,
10 talked about the sexual abuse at the hands of his
11 father and it turned out that Gary Mullis really was a
12 police officer and that Gary Mullis denied that this
13 had ever happened and it was never reported throughout
14 all those years and even to this moment you didn't hear
15 it until you heard it in the courtroom, someone on the
16 jury might say that's a little bit of a late reporting
17 of being a victim and I'm suspicious that that's
18 something that would affect someone. But that's not
19 what you have here.

20 The records were replete. The records are
21 all here, hundreds of exhibits, they're all available
22 to you to show that he really was sexually abused by
23 his father and it really did happen and it really did
24 affect him. That's not offered to you as an excuse.
25 It's by way of understanding.

- March 21, 2011

32

1 And we don't know how many years it went
 2 on. We really don't know. We know what Gary Mullis
 3 said. But if you remember when we were talking to
 4 Dr. Mendel on the stand about why would a sex offender
 5 minimize how many times he offends, the State stood up
 6 and stipulated that a sex offender is going to minimize
 7 their conduct. I don't think he needed to because I
 8 think you-all understood that but at least we're all in
 9 agreement that that's what a sex offender's going to
 10 do.

11 Now, Travis Mullis in his statement to the
 12 Philadelphia Police Department did a Gary Mullis. He
 13 didn't admit what he did to his son. That doesn't take
 14 away from the fact that he did it. And it was
 15 horrifying. There's no question. Sickening.
 16 Disgusting. Nobody is not affected by that. But over
 17 the last three days of last week when you learned his
 18 history and you learned about what he had done and what
 19 he had been through, did it really surprise you? I
 20 don't think it should.

21 The other thing about him walking into the
 22 Philadelphia Police Department, the Philadelphia police
 23 station peacefully, turned himself in, confessed to the
 24 crime, that should not go unmentioned here because
 25 guess what? That's also mitigating. I think it shows

33

1 remorse. I think it does. Dr. Mendel agreed with that
 2 as well.

3 What happens in trial sometimes is jurors
 4 sit there, especially if there's no evidence from the
 5 Defendant himself. You can't take that into
 6 consideration. You can't. The Court's Charge tells
 7 you that. And sometime later when they're back there
 8 deliberating they think, well, all he did was sit there
 9 and write notes. Do we really know how he felt about
 10 this? Well, in this case based on the evidence that
 11 you've heard, I submit to you that you did because
 12 before he came back to Texas, before he had lawyers,
 13 before he started his hi-jinx in his cell -- and I'll
 14 get to that in a minute -- he walked into the
 15 Philadelphia Police Department on his own when he could
 16 have ran and confessed to the crime when he didn't have
 17 to. He didn't do it fully. And now I know now that
 18 all the lawyers agree that that's kind of a normal
 19 thing to do.

20 I don't mean to say it's right. It
 21 doesn't mean that we like it. None of us would ever do
 22 it. But we're not talking about excusing behavior.
 23 We're talking about the difference between living out
 24 your life in prison, which is why I tell you the
 25 evidence should make you decide he should be, or

34

1 deciding he is so dangerous and none of what happened
 2 in his life is sufficiently mitigating that he ought to
 3 be removed from the earth. And that's not what should
 4 happen, not based on the evidence.

5 So, Gary Mullis does that to Travis and
 6 Travis does that to Alijah at almost about the same
 7 age. Gary Mullis does it to Travis for we don't know
 8 how many years and we don't know how many times. The
 9 State would ask you to skip over that because somebody
 10 somewhere, maybe in the state of Iowa had that happen
 11 to them and they didn't go out and become a capital
 12 murderer. That's not even the law. That's not even
 13 relevant.

14 I don't care if you cured cancer and you
 15 were a sexual assault survivor. Hopefully there's
 16 someone who will some day. It doesn't matter because
 17 we're not talking about what someone else could do.
 18 We're talking about how it affected him. He's the guy
 19 on trial and that's why the evidence is presented to
 20 you. If it's not presented to you, how do you know to
 21 make that decision?

22 So, Travis does it to his son one time and
 23 the State would ask you because he did it and because
 24 he didn't admit it up front, that you could use that to
 25 kill him. Well, they might say Gary never killed

35

1 Travis. No, he didn't. That's true. He put him on
 2 the path for where he is. And also remember this: A
 3 life sentence, as you all agree, is not getting off
 4 easy. That's punishment for what he did.

5 Okay. One thing on his background I
 6 wanted to mention and that is Sheila Wallace and also
 7 Ann Mullis, his birth mother, his adopted mother. The
 8 State usually argues in death penalty cases that the
 9 Defense comes in here and beats up on the mom. After
 10 all, it's got to be her fault that made him commit that
 11 crime. I will tell you that is not necessarily so and
 12 that was not the desire we were trying to do. But if
 13 we didn't present background of his upbringing and
 14 background of his health and background of his prenatal
 15 care and all the other things, how would you be able to
 16 base a decision? So, that's why it's presented to you.

17 Apparently, Sheila Wallace and Ann Mullis
 18 were not the worst mothers. Apparently for different
 19 reasons, various and different reasons, they probably
 20 weren't the best mothers either. But there was love in
 21 the Wallace home. You could tell that from her
 22 children who came in here and testified. It may not
 23 have been the most healthy environment. She didn't
 24 take care of herself as well as she should have. Those
 25 things definitely affected Travis as Dr. Katz has told

<p style="text-align: right;">36</p> <p>1 you. But I bet there was love in that home, I think. 2 I think you can tell that by the fact that her children 3 came in and although they want to support someone that 4 they haven't even laid eyes on for 23 years, they still 5 had a difficult time criticizing their mom and 6 criticizing the home that they lived in.</p> <p>7 But I get the sense and I think maybe you 8 do, too, that Sheila Wallace for the decisions she made 9 about her health and the decisions she made about her 10 lifestyle, if she could have I have this sense that 11 when Travis Mullis went to trial in this case, she 12 would have been front row to watch what was going on to 13 be able to support her son. I think she'd be the first 14 person to ask you to spare her son's life in spite of 15 what he may have done.</p> <p>16 That's not Ann Mullis. Ann Mullis, 17 according to her brother, said that she decided to 18 distance herself from this situation. And that's not 19 beating up on someone, but that's just stating it like 20 it is. As a matter of fact, we heard from Steven that 21 he, his mother, Francis Barry, would take legal action 22 if the Defense even tried to contact them. I suspect 23 that's Ann Mullis, too.</p> <p>24 And one more thing, even if Ann Mullis 25 was, as the State's probably going to argue, a great</p>	<p style="text-align: right;">38</p> <p>1 poor impulse control that Dr. Mendel talked about. Do 2 you really think he could sit there and hold his breath 3 for that long and not anything occur, not anything at 4 all?</p> <p>5 Don't you know that if there was anything 6 more than jumping out and saying boo when they do a 7 head count, if it was assault, if it was extortion, if 8 it was leading the gang on the cell block or whatever 9 it might be, don't you know if there was any evidence 10 of that that you would have heard about it in three 11 years time?</p> <p>12 They trumped up this initial thing on the 13 cell wall as a reason for you to kill him. They 14 trumped up this suicide attempt as a reason for you to 15 kill him. Is he a future danger? Have they proven to 16 you beyond a reasonable doubt that he's a future 17 danger?</p> <p>18 Is it because he repeated this cycle of 19 abuse to his cousin that he acted out and did what he 20 was taught? Is it because he held something to his 21 friend's neck? May have been a knife. May not have 22 been a knife. He doesn't know. Didn't get hurt. 23 Didn't call the police. Didn't go to the doctor. 24 Later helped him get a job and took him in for a night 25 and apparently slept peacefully and without concern.</p>
<p style="text-align: right;">37</p> <p>1 and wonderful mother, what does it tell you -- because 2 I don't think a 3 or a 4 or a 5-year-old or a 3 6-year-old or a 7-year-old could ever possibly answer 4 questions in such a way that they would know that 5 someday they would be prosecuted for a horrible crime 6 and their words would be used against them -- so I 7 submit to you what Travis said in those days was true.</p> <p>8 But even if she had been the attentive 9 mother that the State wants you to believe that she 10 was, doesn't the fact that she was more attached to the 11 child molester tell you something? It should tell all 12 of you mothers something and it tells all of us fathers 13 something, too, I think.</p> <p>14 Now, the Court's Charge tells you that if 15 you answer Special Issue No. 1 "no," then you don't 16 even move on to Special Issue No. 2.</p> <p>17 I think Special Issue No. 2 has gotten so 18 much mitigating evidence in it that you folks could 19 practically do a show of hands in the jury box. I know 20 you won't because you need to go back and deliberate. 21 But bear in mind that you don't even get there unless 22 you get there on Issue No. 1. And now I kind of wanted 23 to talk to you about that.</p> <p>24 You look at his three years in custody 25 here in the Galveston County Jail. You look at his</p>	<p style="text-align: right;">39</p> <p>1 Is that a reason for the State to ask you answer Issue 2 No. 1 "Yes"?</p> <p>3 Is it because he wrote this silly 4 62-person hit list in permanent marker on his cell wall 5 along with inaccurate gang graffiti that pits one gang 6 against another? And they're at odds with each other, 7 all of which the deputy agreed puts him in more danger 8 than anything else. That's not very subtle.</p> <p>9 And we had a little fun with the initials 10 and you now know that his lawyers' names are on that 11 list along with part of the Defense team and apparently 12 some other people, too. There's some initials that 13 seem to match, although no one can say for sure but 14 they seem to match some other people that were 15 witnesses in this case, police officers in the case 16 perhaps, things like that.</p> <p>17 If you will remember and trying to put 18 that in perspective, he had just received news that his 19 -- he had been in jail for a long time and his trial 20 wasn't going to happen for an even longer period again. 21 It led to this suicide attempt and it led to these 22 things on the wall. Both those events are a month 23 apart. The records are here. You can take a look at 24 them if you like.</p> <p>25 Was he just showing frustration at the</p>

<p style="text-align: right;">40</p> <p>1 system? Was that really the kind of thing, that subtly 2 putting in permanent marker that hit list on the wall 3 something that would make you folks go back there and 4 say this guy deserves to die? That thinking is so 5 messed up that you shouldn't hate him. You should pity 6 him. If it was a real threat and if he was really 7 going to carry this out from beyond the jail walls, and 8 if someone was really in threat and if it was really a 9 reason to kill someone, wouldn't there be other 10 initials on that wall as well? That was what was going 11 on in his mind, his frustrated little confused mind, 12 back in that year.</p> <p>13 That's not something for you to hang your 14 hat on and go back there and look at each other and 15 say, well, we'd better answer Issue No. 1, "Yes." 16 We're sure convinced that's going to happen. Because 17 it's not. When he was told to wash it off, he did. 18 When he was told not to do it again, he didn't. He 19 follows the rules in confinement.</p> <p>20 Mr. Kelly told you that. He went to see 21 him at Sheppard Pratt. He said he's comfortable there. 22 He seems safe there. Dr. Mendel used the word 23 "institutionalized." He's not a danger. He's not a 24 danger to that prison society. Society's not defined. 25 The word "prison" is not in there but don't -- and I</p>	<p>1 going to have sex in prison -- and he might. Probably 2 will, most would say. Do any of you take a look at him 3 and think that it's going to be non-consensual? I 4 doubt it. I don't see him forcing himself on anyone in 5 prison.</p> <p>6 And if the State's trying to tell you that 7 because he might have sex in prison some day and that's 8 the reason to kill him, that's not only improper and 9 illegal but I would think it would be offensive to ask 10 you to decide the factors in this case on that basis.</p> <p>11 We talked about -- witnesses talked about 12 where he would be on the totem pole there in prison 13 when he goes. He's going to be more in danger than 14 anybody else. If the State were to argue, well, if 15 he's going to go up there and going to be in such 16 danger that he might even be harmed. He might even be 17 killed. Let's save everybody some time and answer 18 these questions the way we want you to. I would think 19 that would equally be illegal and I would also think 20 probably offensive to you, as well.</p> <p>21 If you follow the law and I think you will 22 -- if you follow the evidence that the State has 23 presented to you, the explanations and the evidence 24 that have been presented to you by the Defense, this 25 total picture and package of Travis Mullis, I think</p>
<p style="text-align: right;">41</p> <p>1 don't think you are -- be confused by the fact that you 2 know what the question leads to. He doesn't move down 3 the block. We used that example during voir dire as 4 well. He goes to prison for life and all of his life.</p> <p>5 Real quick on that suicide attempt. The 6 State may argue, well, gee, he might do that again. 7 Again, think about what he had just heard. He told 8 them that it was a suicide attempt. At some time later 9 after the threat had passed and he is in full suicide 10 procedure, that rubber room they talked about, he tells 11 the doctor who came in here for the State that "That's 12 not really what I meant to do. I was just bored." Was 13 he? Did he think that or was he just trying to get out 14 of that FSP that they talked about? It doesn't make 15 him a future danger. It doesn't make him Lex Luthor. 16 That's what the State's going to want you to believe. 17 There are no children in prison. There 18 are no adolescents in prison. You all agreed to that, 19 too, when we talked earlier last month. The State's 20 going to argue that because he had sex with other 21 juveniles at Sheppard Pratt, that that makes him a 22 danger. So, I guess the implication there is that he's 23 going to have sex with men in prison and that makes him 24 a danger.</p> <p>25 Take a look at him. Do you think if he's</p>	<p>43</p> <p>1 that you will find that you have not been convinced 2 beyond a reasonable doubt that he's a future danger. 3 The facts don't support it. A couple of little minor 4 incidents don't support it, and your answer to 5 Issue No. 1 is "No."</p> <p>6 Your work is over, the trial is finished, 7 you've given Travis a fair trial, he gets what he has 8 coming and you will have done the right thing and 9 giving him a life sentence is the right thing because 10 his life does have value. The evidence is there to 11 show you that his life has value. The evidence is not 12 there to show you that he is a future threat. Thank 13 you.</p> <p>14 THE COURT: Mr. Bourque.</p> <p>15 MR. BOURQUE: What do you say? We'll 16 start with this: "I don't want to touch him because 17 the last boy child I touched died."</p> <p>18 I told you in voir dire that there are two 19 things. Remember that? Two things. The "Hall of 20 Justice" is lined with two things. On the one wall is 21 plastered "hate, vengeance, anger, vitriol." The other 22 wall is draped with a fabric composed of love, 23 compassion, and understanding. You will not have to 24 guess next week what motivates you. You will know. 25 You will never have to wonder again what really</p>

March 21, 2011

<p>1 motivates you. You will know.</p> <p>2 This is the saddest of sad. The only</p> <p>3 backdrop I have for this is what my faith tells me</p> <p>4 about Alijah. That's it. So, now we look and we say</p> <p>5 what do we do about this? I will take you first to Dr.</p> <p>6 Katz who says he was already set up for significant</p> <p>7 neuropsychiatric damage in utero through no fault of</p> <p>8 his own.</p> <p>9 Is there no level of compassion where we</p> <p>10 look up one day and we say but for the grace of God</p> <p>11 there go I? Maybe your mom and dad weren't perfect.</p> <p>12 I'm sure I wasn't perfect. But through no fault of her</p> <p>13 own you might say she was a physical disaster, a</p> <p>14 medical disaster. If Travis James Mullis were here</p> <p>15 today laying on a gurney as a quadriplegic on life</p> <p>16 support systems would it make a difference to you in</p> <p>17 determining what you're going to do?</p> <p>18 And I submit to you he's an emotional</p> <p>19 mental health quadriplegic. It's not that he's</p> <p>20 unwilling, he's unable. And the question is not since</p> <p>21 he's like that, then is there a blank we can fill out</p> <p>22 to just kill him and be done with it? I don't know</p> <p>23 what to tell you, what magic word to give you but</p> <p>24 compassion has its place in this case. Love has its</p> <p>25 place in this case. You can love Alijah and you can</p>	44	<p>1 one should have to live the life that Travis Mullis has</p> <p>2 lived and then die and go to hell for it. I don't</p> <p>3 know. But I know this. He should not die because he</p> <p>4 does not know love.</p> <p>5 You go to weddings all the time and they</p> <p>6 read the saying from Paul where Paul talks about the</p> <p>7 greatest of these is love. You know the only person</p> <p>8 that Christ ever rebuked was the rich man. He never</p> <p>9 rebuked anyone else. And he told us love, love, love</p> <p>10 and even in Matthew when he speaks before he gets to</p> <p>11 543 where he talks about loving your enemies, he talks</p> <p>12 about -- he goes into -- you have heard an eye for an</p> <p>13 eye but truly I tell you. And then he says, "Love even</p> <p>14 your enemies." I'm not telling you that Travis is an</p> <p>15 enemy but he doesn't have our capacity to understand,</p> <p>16 our capacity to even develop a moral compass. Maybe</p> <p>17 given time God can reach him. Maybe. Got to give him</p> <p>18 that chance, though. Because we're all valuable.</p> <p>19 Every one of us.</p> <p>20 Dr. Katz says he doesn't belong in our</p> <p>21 society. He doesn't. That's already fixed. He's not</p> <p>22 coming out of our society -- into our society. He will</p> <p>23 die in prison. I ask you to let him die by whatever</p> <p>24 other cause. I'm asking you not to have to carry his</p> <p>25 blood on your hands. I'm asking you not to do that.</p>	46
<p>1 love Travis James Mullis. They are not mutually</p> <p>2 exclusive. You can have compassion for Alijah Mullis</p> <p>3 and you can have compassion for Travis James Mullis.</p> <p>4 They are not mutually exclusive.</p> <p>5 Where do we drift as a society if we say,</p> <p>6 well, you tried. You tried to work the program. You</p> <p>7 just couldn't get there. We're tired, we're old, you</p> <p>8 die. This is the saddest of sad to not be able to</p> <p>9 understand how you can take a child and do this</p> <p>10 (demonstrating) and roll on the ground with the child</p> <p>11 and hold him and hug him and love him, to not know</p> <p>12 that, to not know the value of that feeling. There's</p> <p>13 nothing like it and you know what I'm talking about.</p> <p>14 There is no greater feeling than to have a child right</p> <p>15 here and really not want to let go. You know what I'm</p> <p>16 talking about. He doesn't know that. He doesn't know</p> <p>17 that. He's going to live whatever life -- he doesn't</p> <p>18 know that feeling. It's not Sheppard Pratt's fault.</p> <p>19 It's not his fault. It just is.</p> <p>20 And so do we say because you don't know,</p> <p>21 because you can't come to where we come, you can't feel</p> <p>22 because you don't know the love that God has in your</p> <p>23 heart for you, that we just throw you out and we kill</p> <p>24 you? I don't know. No one should have to live the</p> <p>25 life that Travis Mullis has lived. Listen to me. No</p>	45	<p>1 Emotional quadriplegic.</p> <p>2 Hit list, that's the stupidest thing I've</p> <p>3 ever seen in my life. A narcissistic goofball writes</p> <p>4 that list. Please. That's some kind of threat?</p> <p>5 Really? Come on. Julio Hernandez, who even knows what</p> <p>6 happened? Who even knows if it really did happen? If</p> <p>7 Travis is a threat to do anything in prison, if he's a</p> <p>8 threat to do anything in prison, it's to perform</p> <p>9 fellatio. That's it. You can kill him for that?</p> <p>10 Reactive attachment disorder layered upon</p> <p>11 top of post-traumatic stress disorder layered upon top</p> <p>12 of bipolar disorder, chronic, not otherwise specified;</p> <p>13 borderline personality disorder; separation anxiety.</p> <p>14 Narcissism disorder; sexual identity confusion; and then</p> <p>15 the necrotizing enterocolitis. His life was set up in</p> <p>16 such a way that his life was destroyed.</p> <p>17 I hope that you understand what the State</p> <p>18 of Texas is asking out of each one of you, each one of</p> <p>19 you. It's not a team verdict. Each one of you, each</p> <p>20 one of you has it in your hands to spare his life.</p> <p>21 Each one of you has it in your hands to spare his life,</p> <p>22 each one. Any one.</p> <p>23 Psychobabble. Really? That's where we're</p> <p>24 going to go with this? Really? Really? I think there</p> <p>25 were eight or nine of you that I sat in the chair right</p>	47

- March 21, 2011

48

1 here and talked to directly and asked each one of you
 2 directly, "Will you give meaningful consideration to
 3 our mitigation on evidence?" Psychobabble? Really?

4 I know for sure eight of you are better
 5 than that because that's eight or nine that I talked
 6 with. We hired experts to throw them up there to just
 7 say whatever we want to so we can look good on paper?
 8 Really?

9 The value of an expert's testimony is
 10 somehow judged by who calls him? Really?

11 Because the State -- great State of Texas
 12 wears the white hats, had they called these men to
 13 testify, they would have some value? Because the
 14 Defense calls them, they have no value? They're not to
 15 be trusted? Really?

16 The State of Texas wants to defend Gary
 17 Lynn Mullis. Really? Are you buying that? Really?

18 The great State of Texas wants to defend
 19 Ann Mullis. Really?

20 Doesn't her absence speak volumes? You
 21 know a mother, you had a mother, you are a mother.
 22 Doesn't come to ask you to spare her son's life and
 23 they defend that? Really?

24 Where would you be as a father or a
 25 mother? Where do you think Sheila Wallace would be

49

1 today? She'd be here. You might have to wheel her in
 2 if she were alive. She'd be here. You know she would
 3 be here. She thought in her limited way that it was
 4 better for her not to touch Travis for fear that it
 5 might kill him, but she was willing to do that to save
 6 his life.

7 This kid never caught a break. Ann Mullis
 8 was not a break. When the going got tough for Ann
 9 Mullis, she did what everyone else did. She dipped her
 10 hands in the water and she said not my problem. So,
 11 literally every single solitary person, his biological
 12 mother through no fault of her own was already at the
 13 end of her life when she got pregnant and then she
 14 died. The biological father, as many useless fathers
 15 do, had already hit the road before birth. Came back
 16 to see if Travis was worth loving and determined he
 17 wasn't and off he went and he never heard from him
 18 again.

19 The adopted father is dead and Ann Mullis
 20 is nowhere to be found. What kind of message was being
 21 sent to Travis Mullis when every single solitary person
 22 that could have taught him the value of this feeling
 23 just turned and gave him the finger.

24 Does he have a sexual identity crisis or
 25 problem? Yes.

50

1 Is that a threat to our society? No.
 2 He's locked up. He's in prison. He's
 3 never coming home. He's a threat to no one. You know
 4 exactly what will happen to him when he gets in the
 5 general population, don't you? He's not a threat to
 6 anyone.

7 The question is: Do you find from the
 8 evidence beyond a reasonable doubt that there's a
 9 probability the Defendant would commit criminal acts of
 10 violence? Criminal acts of violence first. No. That
 11 would constitute a continuing threat. Given his -- he
 12 won't become -- not TJ Mullis. By the time he hits the
 13 general population, he will be BJ Mullis. "Hey, BJ,
 14 get over here." By the time he hits the general
 15 population, he'll be BJ Mullis and he'll go. Because
 16 not to go is his death warrant.

17 Threat to our society? No.
 18 Special Issue No. 2, we all talked about
 19 it. Everyone that I talked to about the value of
 20 trying to understand what we're saying in Special Issue
 21 No. 2, is his life compass broken through no fault of
 22 his own? There is no other viable answer to that. It
 23 is broken through no fault of his own. And you should
 24 answer Special Issue No. 2 in a way that a life
 25 sentence should be imposed. You should answer Special

51

1 Issue No. 2 in a way that a life sentence is imposed.
 2 I cannot tell you how proud I am of the 12
 3 of you. I'm exhausted. You're exhausted. There is no
 4 stress level in the history of jurisprudence like this
 5 stress. I ask you to take a deep breath, go inside
 6 yourself and ask yourself a quiet question and then
 7 spare his life because as a society you've got to be
 8 better than this. You've got to be better than this.
 9 I cannot imagine, I cannot imagine living your life
 10 without that. I can't imagine that. What must that be
 11 like? And doesn't the person who can't identify with
 12 this deserve our mercy?

13 This is such a wonderful feeling,
 14 (demonstrating) I even use it on other people's
 15 grandchildren. It feels so good to the heart. It
 16 rejuvenates you and it strengthens you and it empowers
 17 you. What must it be like not to know this? Even if I
 18 just didn't have any of that other stuff, this is it.

19 This is it. This is enough. Thank you.
 20 THE COURT: Mr. McClellan.
 21 STATE'S FINAL CLOSING ARGUMENT
 22 MR. MCCLELLAN: May it please the Court,
 23 ladies and gentlemen of the jury, counsel for the
 24 Defense, counsel for the State.
 25 Now, I guess it's your fault. How many

- March 21, 2011

52

1 times -- I love it when the Defense gets up here and
 2 tells you what I'm going to say. I'm going to ask you
 3 to kill because of graffiti. Look at the word they
 4 used. "Kill." I'm going to ask you to kill because of
 5 this. I'm going to ask you to kill because of this. I
 6 don't know how many of you but the vast majority of you
 7 I did voir dire and I had one phrase that I suggested
 8 was going to last through voir dire through this trial
 9 until today to the time you go back in that room: I
 10 will a true verdict render based on the law and the
 11 evidence. Period. End of story. Wherever that takes
 12 you, that's where you go.

13 You've heard nothing but telling you what
 14 you have to do, telling you to have sympathy for Travis
 15 Mullis, telling you what you have to think, telling you
 16 what the State is going to say. Stay true to the thing
 17 that we talked about, true verdict render based on the
 18 law and the evidence and you will be well served by
 19 following that guideline.

20 I find it amazing that the Defense says --
 21 Mr. Loper says, you know, Issue No. 2, we can probably
 22 just take a show of hands right now and we don't even
 23 need to discuss it. Well, if they're so confident you
 24 can find that there is mitigation he's going to get a
 25 life sentence, why do they spend all their time on

54

1 person that fits that answer? Not what is he going to
 2 do, how is he going to do it, whatever.
 3 I would suggest to you that when we
 4 brought you in and said take a look at Mr. Mullis, is
 5 he the type of person -- by looking. That's what
 6 they're talking about. Is he the type of person that
 7 would take out his 3-month-old son, stomp on his head
 8 after sexually assaulting his son? No, he doesn't look
 9 like that. You can't judge a book by its cover but you
 10 can judge a person by what he's done and they want to
 11 minimize everything he's ever done.

12 Well, he was -- quite frankly all those
 13 records, the things that -- volumes and volumes of
 14 records that weren't introduced, that is society's
 15 attempt to make him be a person that should be in
 16 society. And after all those attempts, after all that
 17 effort, after everything that's been done after years
 18 and years, here is what we have as a result. Here's
 19 what we have as a result, why we are here today.

20 Now, while he was locked up at Sheppard
 21 Pratt -- I think the Defense said, well, he was
 22 comfortable there. Oh, yeah, I'm comfortable at
 23 Sheppard Pratt. I've been there three years. Let me
 24 see, I've victimized four, five, maybe eight guys.
 25 Good deal. I'm thinking: All right, I'm doing okay.

53

1 Issue No. 1? Because it doesn't make any difference
 2 what you answer on Issue No. 1 if on Issue No. 2 you
 3 say there is mitigation, which they think is a slam
 4 dunk. Something's wrong here. Somebody's trying to
 5 lead somebody down somewhere.

6 Issue No. 1, they spend all their time,
 7 he's not a continuing threat. Now, follow the logic.
 8 He's not a continuing threat to commit acts of violence
 9 that will be a continuing threat to society because
 10 he's going to be in the penitentiary.

11 Let me just guess, I'm taking a wild shot
 12 here, everybody convicted of capital murder is in the
 13 penitentiary. Everybody on death row is in the
 14 penitentiary. That's where they are. The issue is not
 15 what will he do in the penitentiary. The issue is
 16 this: Is penitentiary a part of society? You bet it
 17 is.

18 Does it say while confined in the
 19 penitentiary? No, it doesn't. But they want you to
 20 think that's the only thing. Here's the issue. Some
 21 of you I mentioned this. As you sit here this day and
 22 as Mr. Mullis sits here this day, do you believe beyond
 23 a reasonable doubt there's a probability that he would
 24 commit continuing criminal acts of violence that would
 25 be a continuing threat to society? Is he the type of

55

1 But you know while at Sheppard Pratt while
 2 he's creating more victims, he's also any time, any
 3 time he doesn't get his way he strikes out, he gets
 4 angry, he explodes. He does whatever. He goes to the
 5 quiet room so much they ought to call it the Mullis
 6 room.

7 Now, you have records in there that
 8 indicate -- and they were put in there as State's
 9 Exhibit No. 204 -- that during one of the times he
 10 assaulted one of the people that was the staff there at
 11 Sheppard Pratt. Now, stay with me for a minute because
 12 I've got a point to make.

13 It said, "He took his anger out on the
 14 staff and began throwing sample bottles at the staff.
 15 Ms. Dee bent down to pick up a hygiene basket after he
 16 went to the bathroom. He came out of the bathroom and
 17 kicked Ms. Dee in the head." Okay. Fast forward two
 18 or three days.

19 "He had a one-on-one with Ms. Dee. He was
 20 very concerned if he had hurt her" -- or she says "me"
 21 because she's the one that wrote this -- "hurt me when
 22 he kicked me. Travis said he was sorry about five
 23 times." Now the punch line: "He asked if I was going
 24 to press charges."

25 That's his concern. Not remorse for

- March 21, 2011

<p style="text-align: right;">56</p> <p>1 having done what he's done. Are you going to press 2 charges? It goes on to say "Travis felt so much better 3 after our talk." No kidding. Travis while he's there 4 did what he wanted to do when he wanted to do it. 5 That's his life. It's all about me. People are 6 objects to be used. People -- and once in the record 7 there was a notation where they said, "Are you trying 8 to manipulate us?"</p> <p>9 He said, "I manipulate y'all so many times 10 you don't even know it." That's what he's dangerous 11 for, manipulation. That's what he does. He 12 manipulates people. Even while locked up, he continued 13 to offend. Even while being treated for the sexual 14 crimes he committed and for the mental issues, he 15 continued to offend.</p> <p>16 They said, well, he made a hit list and 17 that's just a big joke. I don't know if it's a joke or 18 not. That's what went through his mind, here's the 19 people I hate. And we're going to talk about this in a 20 minute but he is who he is. He's the same person that 21 back on January 29th as he is here today. He doesn't 22 look harmful. He doesn't look like he'd be a problem. 23 He doesn't look this part but the records show that he 24 is dangerous, that he does commit criminal acts of 25 violence that is a threat to society.</p>	<p>1 Travis Mullis didn't have a life compass. He doesn't 2 have a life compass. He doesn't have a conscience. He 3 doesn't know right from wrong. He knows it's all about 4 me. He sees people as things to be used, not as people 5 to be used, as objects to be used. He has no life 6 compass.</p> <p>7 He doesn't have a conscience. It's what 8 we called cold-blooded killer. We didn't need a DSM-IV 9 to know what we're talking about, cold-blooded killer. 10 Doesn't look like a cold-blooded killer, but now you 11 know that he is. So, he has no conscience. He 12 manipulates others for his own purposes.</p> <p>13 This idea about the fake suicide, it was 14 just a fake. I don't know about the suicide part. Let 15 me see, if I put a sock in my mouth, get a potato chip 16 bag to go over my head. I don't know if -- I'm dying. 17 No. He was manipulating and he was manipulating to get 18 out and go someplace else. He knows how to manipulate 19 people. That's what he's learned. He sees, as we 20 said, other people as objects. It's all about 21 fulfilling and satisfying his needs.</p> <p>22 We know that he's impulsive and has anger 23 and can't control his anger at the time like when he 24 kicked Mrs. Dee, when he throws the shampoo and when he 25 gets all kind of outrage. Luckily he didn't have at</p>
<p style="text-align: right;">57</p> <p>1 They say, well, wouldn't he have done 2 something wrong in the last three years, if he had been 3 here in the Galveston County Jail for the last three 4 years? Let me think my way through that. Let me see, 5 I've been charged with capital murder. They're trying 6 to seek the death penalty. If I start acting out too 7 much, it's probably a bad thing, probably not going to 8 be to my benefit. I suggest defense counsel probably 9 told him that. So, the fact he can behave for a period 10 of time, sure.</p> <p>11 My mind just wants to jump ahead so fast 12 and go to something else. I'm going to try to take it 13 to where it makes sense because there's going to come a 14 time where we're going to look at why didn't he do it 15 before. Okay. And that's going to be the question.</p> <p>16 The crime itself, that tells you, doesn't 17 it, that this guy's a continuing threat to society, 18 probably the most disgusting, despicable crime you 19 could think of. You'd be hard pressed to come up with 20 a worse set of facts.</p> <p>21 Mr. Bourque -- I didn't forget this -- Mr. 22 Bourque said throughout the trial for those of you that 23 had his voir dire, you know, it's all about Travis' 24 life compass. His compass is broken. It's either none 25 of his fault, some of his fault or all of his fault.</p>	<p>1 Sheppard Pratt things to use around that might cause 2 other injuries because we know this is how he works. 3 His anger is out of control and he reacts 4 with violence to what he doesn't like but more 5 important, he acts out of violence for things he can't 6 control. As long as he can control you, you're okay. 7 As long as he can control what's going on, it's okay. 8 As long as I can manipulate you, you're fine. But when 9 I can't, things are out of control.</p> <p>10 He has no remorse. He's not upset about 11 this. And let's just look and, you know -- remorse, to 12 me, is my God, what have I done? How could I have done 13 this? Do you see one -- anybody, anywhere, anyplace 14 where that's what he said? No. Let's look in the 15 statement.</p> <p>16 This is the statement he gave on the first 17 part of February, two maybe three days at the outside 18 from committing this crime. Here's the man who 19 committed the crime and here he is turning himself in 20 and now giving a statement to the police. And here's 21 what's utmost in his mind. He gives the statement and 22 he's given a chance to correct it. He corrects the 23 fact that there's not a space between forms and the 24 No. 75-331B. That's pretty important, in his mind.</p> <p>25 They asked, "Do you have any children?"</p>

- March 21, 2011

60

1 He says, "Yes, I had a son and he was
 2 3 months old." Doesn't indicate any remorse there. He
 3 goes through and makes other grammatical changes. He
 4 spells Reuters for them because they've got that
 5 spelled wrong. That's pretty important.

6 And, of course, then he says when he's
 7 talking about what's going on with Alijah, "the only
 8 way I could stop him from crying was to kill him."

9 But then he says after he had -- "I picked
 10 up Alijah by the legs and threw him away like trash."
 11 He said, "I just started crying and was thinking what
 12 was I going to do."

13 Give me a break. I killed my 3-month-old
 14 son. What am I going to do?

15 Not what have I done, how could I have
 16 done this. It's all about me.

17 He said, you know, of course, "I decided
 18 not to kill myself." He makes choices. All of his
 19 choices are self-preservation choices. What helps him
 20 choices. Not about empathy, remorse or anybody else.

21 Then he says -- I was thinking about when
 22 he goes around and stops at these different places and
 23 he asks for help and they send him to a social services
 24 outreach place. "Well, I can't go there because I
 25 don't want them to know all that information because I

61

1 was afraid I was going to get caught." There again,
 2 it's all about Travis.

3 He said, "I was thinking about going back
 4 to Mr. Kelly's house." He was talking about being
 5 there. "I explained to him about the real situation"
 6 because he hadn't been truthful with Mr. Kelly "but I
 7 decided not to." Again a choice, help him.

8 Then, of course, they tried to give him
 9 credit for the fact he went into the police station and
 10 gave -- told them what happened. Not so fast. Not so
 11 fast. He didn't tell them what happened. He told them
 12 what he wanted them to know. Obviously he left out a
 13 big part of what occurred.

14 They asked him did you ever -- talk about
 15 Alijah. "Did you ever think about taking your son to
 16 the hospital in hopes they might be able to resuscitate
 17 him?" His response was "No. By that time I knew I was
 18 in trouble and didn't want to get caught and I drove
 19 away." Choice. See, that's the deal. He had the
 20 ability to make choices. Whatever mental issues he has
 21 or doesn't have, he has the ability to make choices.
 22 The choices he makes are all about him and never about
 23 the goodwill or health of somebody else.

24 He's upset. He said he was upset that he
 25 killed his son but he was totally logical whenever he

62
 1 tells about all these things in the statement. He had
 2 a plan to get away. He couldn't take Alijah to get --
 3 seek help because that was going to get him caught. He
 4 had no problem thinking, though, about and making
 5 decisions about self-preservation. And in the result
 6 of Alijah being in the way, he just threw him away.

7 They asked you, they said, "Does he look
 8 like a threat to somebody in prison?" Like, if you
 9 didn't know him before and you didn't know what you do
 10 now, does he look like he would go out and kill a
 11 3-month-old son? But here's the problem. He looks
 12 harmless, but he's a con man. He's a manipulator. And
 13 the biggest manipulation, the biggest con he hopes to
 14 pull off is to con you into believing he's not a
 15 continuing threat. That will be his biggest con.

16 I told you he doesn't have a life compass,
 17 he has no remorse, he doesn't have a conscience; but if
 18 he did have a life compass, it would always point to
 19 it's not my fault. Now, this doesn't have a whole lot
 20 to do with anything. Of course, I love the fact they
 21 said, well, they're asking you to kill him because of
 22 this, they're asking you to kill him because of this.

23 We're asking you to answer these questions
 24 based on the evidence, a true verdict render based on
 25 the law and the evidence. We're not asking you to kill

63

1 anybody. I've done this a lot of years and I've never
 2 asked a jury to kill somebody. I've asked them to
 3 truthfully answer the questions and whatever the
 4 answers are, so be it. Okay.

5 But if they weren't -- if they put on
 6 evidence about Sheila Wallace for background
 7 information, Lord help me if they ever want background
 8 information. They assassinated Sheila Wallace. I
 9 wanted to ask for an attorney ad litem to represent her
 10 posthumously. They did everything -- because all of
 11 this is relevant, right? Her weight, four packs of
 12 cigarettes a day, 15 cups of coffee, even her vaginal
 13 secretions. They even had testimony about that. And
 14 feces on the bathroom floor because she couldn't either
 15 reach to wipe herself or it got caught in the creases
 16 or folds of her flesh. Now, what in the world does
 17 that have to do with anything?

18 That's just trying to make Sheila Wallace
 19 because she's horrible and it's her fault and she
 20 didn't -- oh, I love it -- she was afraid to touch him
 21 because her last son that she touched died. Said that
 22 one time, if she said it, and then obviously she did
 23 cradle him, she did hold him. You even see pictures of
 24 that. But Sheila, if you were here, I would apologize
 25 to you for the assassination that's been done on your

- March 21, 2011

64

1 character.

2 Here's what I remember about Sheila
 3 Wallace: I'm sure she was morbidly obese, smoked
 4 cigarettes and did all that other stuff. I'm sure she
 5 did. But on the day that Sheila Wallace knew she
 6 wasn't going to live the night, she gave Travis to
 7 Ms. Devlin, a 15, 16, 17-year-old. Take him home.
 8 Take him home with you. She delivered him to someone
 9 who cared. And for that, we would be so lucky if
 10 Travis Mullis had what Sheila Wallace had. Take care
 11 of Aljah. Take care of him. I can't take care of
 12 him. Hand him over to somebody else as opposed to use
 13 him for his physical pleasure and then kill him.

14 Special Issue No. 2 says can you find from
 15 the -- take into consideration all the evidence
 16 including the facts of the crime itself, the character
 17 and background and the personal moral culpability of
 18 the Defendant and are there sufficient mitigating
 19 circumstance or circumstances that warrant a life
 20 sentence rather than a death sentence.

21 "That warrant." What does that mean?
 22 That means that justify, that explain. That is that
 23 the type of thing that is a proper response? And you
 24 read in the charge also that it says you consider
 25 mitigation is that evidence that reduces the

66
 1 Dr. Mendel specializes in the area sexual abuse
 2 survivors and the only something than other? Abuse
 3 survivor that didn't survive is Aljah Mullis. He was
 4 not a survivor. He was sexually abused but he was not
 5 a survivor and that's done based on the acts and
 6 desires and the choices of the Defendant, Travis
 7 Mullis.

8 You know he had the ability to make
 9 choices but the kind of choices he made are
 10 self-centered choices. And here's that dichotomy I
 11 think that you can see. Travis -- I mean, Aljah
 12 Mullis, he had choices and his choices were to use him
 13 for his own sexual pleasure, kill him, stomp his head
 14 in and throw him away like garbage.

15 But then I'll never forget about the
 16 moment that he was in Philadelphia and they asked for
 17 his shoes and his clothes and he looked down -- and he
 18 was told we have to take your shoes because of suicide
 19 precaution and he goes "suicide's not an option."
 20 Because that means he would have to hurt himself. It's
 21 a real easy choice to kill my son but for me, suicide's
 22 not an option.

23 He had choices with Aljah. There were so
 24 many things he could have done. He supposedly reaches
 25 this crescendo of anger and everything that's going on

65

1 Defendant's moral blameworthiness on the bottom of Page
 2 3. Reduces the Defendant's moral blameworthiness.
 3 What's his moral blameworthiness? What about his
 4 actions caused the death of Aljah Mullis? His moral
 5 -- which he doesn't have any morals -- activity that
 6 caused the death of Aljah Mullis. Mitigation is what
 7 reduces that. Okay?

8 And what you have is that after years of
 9 treatment for his being a sex offender, for mental
 10 health issues, being treated by psychiatrists and
 11 psychologists, receiving medication, not receiving
 12 medication, the Defendant does this crime. When he
 13 does this crime after all the attempts have been made,
 14 after all the efforts have been made to change the
 15 person he was, we have received this kind of a case
 16 where Aljah Mullis, 3 months old, was stomped to death
 17 by his father.

18 Now, we don't make light of sexual abuse
 19 and we don't make light of the sexual abuse Travis
 20 Mullis had to undergo. But Travis Mullis is a sexual
 21 abuse survivor. His sister from the same mother, a
 22 sexual abuse survivor. Most sexual abuse survivors are
 23 not re-offenders. Travis Mullis not only is a
 24 re-offender, he also killed his son.

25 I thought it was ironic the fact that

67

1 and, okay, take Aljah and drop him off at a police
 2 station. Take him off and drop him off at a library or
 3 a public park or a McDonald's or places where he could
 4 be found to do whatever -- do something other than
 5 stomp his head in and kill him because now we know, if
 6 we didn't know before, he sexually assaulted his son.

7 Now, either Mendel or Dudley said he had
 8 no control over the difficulties that affected him. He
 9 had no control over the difficulties that affected him?
 10 He said that night he had been overcome by all the
 11 issues that he had. He was at a breaking point,
 12 banging his head on the steering wheel, dashboard,
 13 wherever, so overcome by these difficulties that he had
 14 that he was sexually aroused and had sex and then
 15 placed his penis in Aljah's mouth and ejaculated?

16 These issues that we've been dealing with
 17 for years result in this I don't know what to do. Oh,
 18 I got an idea. You got to be kidding me. You have to
 19 be kidding me. That he was so overcome by all of this
 20 that he decided to have sex with Aljah.

21 Here's the elephant in the room. It's not
 22 me. Why two hours before when he took Cecelia -- you
 23 didn't know about that in the beginning until we get to
 24 punishment. He took Cecelia. He took her to the
 25 store, got candy and cigarettes and stopped at the

- March 21, 2011

<p style="text-align: right;">68</p> <p>1 school. Told her to take her pants down. She didn't. 2 Why didn't he kill her? Wasn't he overcome by the same 3 emotions that he was two hours later? Nothing in his 4 life had changed much, had it? Still didn't have a 5 job, still didn't have any way of income. Makes the 6 choices he makes not to work, choices he makes not to 7 do things, choices he makes to live off of others and 8 not off himself.</p> <p>9 And did you see Cecelia when she took that 10 stand? Can you envision her on the stand, this big 11 lock of bangs? I don't know if you noticed. She's 12 sitting there and the lock of bangs was covering this 13 eye and she could see Travis and she moved her hair 14 over to block that view to see this view. You could 15 tell by Cecelia that she felt she was in the presence 16 of evil even though she's in a courtroom well lit, 17 bailiffs, jury, you could tell she felt the threat and 18 that's the kind of threat that he is. The same issues 19 were affecting him with Cecelia but for some reason he 20 did not choose to kill her.</p> <p>21 Now, this kind of sums up, I think, one of 22 the points. It's in State's Exhibit 204 and it's back 23 on September of 2003. They write: "Travis is 24 justifying his sexual offenses by indicating that his 25 cousin gave her consent as well as denying that he is</p>	<p style="text-align: right;">70</p> <p>1 in control of everything. Sometimes we don't 2 understand it. I don't understand it. But God put us 3 here to do what we're here to do.</p> <p>4 And it says love your neighbor and love 5 your enemy. Well, as a Christian I love Travis Mullis. 6 I hope he finds his Saviour. But it has nothing to do 7 with the decision that's going to be made here today 8 because that's a personal decision. That's a personal 9 relationship everybody has to establish or just not 10 even worry about and for many, many, many years I 11 didn't worry about it. It wasn't important. Now it's 12 important. But whatever it is, it's going to be up to 13 his individual decision. It has nothing to do with you 14 and don't let people put you on a guilt trip about 15 that.</p> <p>16 Special Issue No. 1, is he a continuing 17 threat, probably commit criminal acts of violence, 18 threat to society. Is he that type of person? Sure he 19 is. That's what the evidence shows.</p> <p>20 Is there mitigating circumstances that 21 warrant, that justify, that call for life as opposed to 22 death? No, there's not. There's lots of mitigating -- 23 we talked about the fact if it's sufficient mitigating 24 circumstances. There are all kinds of things. I 25 suggest to you you may be sitting through here like I</p>
<p style="text-align: right;">69</p> <p>1 an offender, preferring to see himself as a victim who 2 victimized someone else in reaction to a flashback."</p> <p>3 "Who prefers to see himself as a victim," 4 boy, does he. Everybody but Travis is responsible. 5 Everybody but Travis is responsible.</p> <p>6 Mr. Bourque said during voir dire and 7 carried it on through the final argument that through 8 this mythical hall he sees the two walls in the "Hall 9 of Justice" that he sees hate, vengeance and anger on 10 one side; love, compassion and understanding on the 11 other. And where are you going to be? Well, that's a 12 great choice.</p> <p>13 How about being in the middle and charged 14 and seeing justice. That's not one of the options he 15 gave you. How about justice? How about responsibility 16 for the actions that you take? And then, of course, 17 they -- he says something to the effect that blood will 18 be on your hands. Ridiculous. Justice. That's not 19 what -- people don't want justice. People want mercy. 20 And he said "God loves Travis Mullis" and God does love 21 Travis Mullis. But God is also a God of judgment. And 22 God will not be mocked.</p> <p>23 It's up to Travis, his relationship with 24 the Lord. It's not anything we can do. We're here to 25 make a decision that God has put us here to do. God is</p>	<p style="text-align: right;">71</p> <p>1 do through these trials and kind of go, well, I wonder 2 what my DM-4 diagnosis is. I've got this and I do this 3 and I don't do this and everybody, I suggest, has 4 things that we don't do that are -- because we're not 5 perfect. Okay. But that's not an excuse. That's not 6 the reason he did what he did. I don't know that we'll 7 ever know the reason that he did exactly what he did 8 other than we know that he did it, he's not remorseful 9 about it, and he doesn't care because he did what he 10 wanted to do and he did that and it's all about him.</p> <p>11 Now, Alijah James Mullis was put to death. 12 On January 29th, 2008. He had none of the safeguards 13 of trial by jury. He had the inability to defend 14 himself. No one came and gave passionate arguments on 15 his behalf. He had no jury to deliberate the evidence 16 and decide his punishment. Travis James Mullis has 17 always. Travis James Mullis, though, for Alijah Mullis 18 was the Judge, the jury, and executioner. I ask you, 19 based on the law and the evidence, where that leads 20 you, to answer Issue No. 1 "Yes" and Issue No. 2 "No." 21 Thank you.</p> <p>22 THE COURT: Counsel, thank you for your 23 closing arguments.</p> <p>24 Ladies and gentlemen, you've heard the 25 Charge of the Court, you've heard the arguments of</p>

72 <p>1 counsel. At this time I'm about to hand the Charge of 2 the Court to Mr. Kelly. He will conduct you to the 3 jury room to conduct your deliberations. We will await 4 further word from you. Let me advise you it's 25 5 minutes until 12:00. We will be making arrangements 6 for you for lunch here in a little while. We will 7 await further written word from you. Thank you. 8 (Jury retires to the jury room) 9 (Open court, Defendant present, Jury not 10 present) 11 THE COURT: I'm going to be separating out 12 the alternate and keeping him separate from the jury. 13 Mr. Kelly is accomplishing that right now. I have him 14 taken to my chambers and I'll ask him to remain 15 separate and apart from them. I think I told him last 16 week to bring a book if he needs to. I'm also going to 17 arrange through the Sheriff's Department to have a 18 deputy accompany them to a lunch place to have lunch. 19 They are under the instructions not to discuss the case 20 while they're doing that. When they come back, we'll 21 await further word. 22 Anything from either side before I go 23 accomplish those things? 24 MR. BOURQUE: The only thing I would say 25 is when you decide where they're going to go for lunch,</p>	74 <p>1 THE COURT: I think you can probably do it 2 during the lunch hour. They're going to the Golden 3 Corral, by the way. Don't go to the Golden Corral. 4 MS. CAMERON: Not a problem. 5 THE COURT: They'll be leaving in the next 6 10 minutes. So, let's work on seeing if we can come up 7 with clean exhibit lists and what the numbers are and 8 that will help them throughout the day and throughout 9 the proceedings as they need to see specific exhibits. 10 MR. LOPER: Judge, you may have said it 11 and I didn't catch it. You said all exhibit lists or 12 just the State exhibit list? 13 THE COURT: No, they want both. They want 14 the exhibit lists from both the State and Defense. 15 Okay. So, you guys are charged with coming up with a 16 clean admitted list of Defense exhibits and you guys 17 for the State. Okay. We've got at least an hour to 18 get that done while they go to lunch. 19 (Recess taken) 20 (Open court, Defendant present, Jury not 21 present) 22 THE COURT: I'm having to do a little 23 interpreting of their note here. It lists Defense 24 items that they would like. Defense 33, 34, 34A, 34B, 25 35, 35A, 35B, 38, 40, 41, 41A, 42, 42A, 45A, 47, 48.</p>
73 <p>1 tell us so we don't go there. 2 THE COURT: I will. 3 MS. CAMERON: Nothing. 4 THE COURT: Should y'all decide to be 5 apart from us for any significant period of time, make 6 sure we have a pager or cell number. Thank you, 7 Counsel. 8 (Recess taken) 9 (Open court, Defendant present, Jury not 10 present) 11 THE COURT: Counsel, I've already received 12 a communication from the foreman. It says: We want 13 the written statement that Travis gave. We want the 14 exhibit list for both the State and Defense and we want 15 photos of the cell." 16 The written statement's easy, the photos 17 are easy but the clean exhibit lists that don't have 18 references to non-admitted evidence may be problematic 19 at this point. Do y'all have -- were y'all thinking 20 ahead and -- 21 MR. MCCLELLAN: We have. 22 THE COURT: -- have exhibit lists that 23 don't have -- 24 MS. ALLEN: I can probably clean it up in 25 10, 15 minutes.</p>	75 <p>1 Now I guess as an afterthought, 30 and 31A. Okay. 2 Any objection to us finding that evidence 3 and sending it back, from the State or Defense? 4 MR. MCCLELLAN: No. 5 MR. LOPER: No, sir. 6 THE COURT: Okay. Well, let's locate it 7 and send it back. Thank you. 8 (Requested evidence sent to the jury 9 room). 10 (Open court, Defendant present, Jury not 11 present) 12 THE COURT: We've received a note that the 13 jury has received a verdict. We're trying to locate 14 the alternate for him to also receive the verdict. If 15 you will bear with us for a couple minutes. 16 Thank you. 17 Are the parties ready to receive the 18 verdict? 19 MS. CAMERON: Yes, we are, Your Honor. 20 MR. LOPER: Yes, Your Honor. 21 THE COURT: Ladies and gentlemen of the 22 audience, we're going to be having the jury come out in 23 just a moment. I'm going to read their verdict. This 24 is a very serious case. I don't know what the verdict 25 will be. I'm asking that there be no outcries or</p>

- March 21, 2011

<p style="text-align: right;">76</p> <p>1 outbursts of any kind. I'm asking that you give this 2 jury and this verdict the respect and deference that 3 they deserve for their decision, whatever that may be. 4 If you feel like you cannot comply with 5 those instructions, I'd ask you to please leave the 6 courtroom. Thank you. 7 (Open court, Defendant present, Jury 8 present) 9 THE COURT: Thank you. Please be seated 10 Mr. Nystrom, I've received your note saying that a 11 verdict has been reached; is that correct? 12 FOREPERSON: Yes, sir. 13 THE COURT: If you would, please, hand the 14 Charge and verdict form to Mr. Kelly. 15 (Complies). 16 THE COURT: Thank you. 17 All right. Counsel, the verdict appears 18 to be in proper form. Cause No. 08CR0333, the State of 19 Texas versus Travis James Mullis. 20 "Special Issue No. 1. Answer: We the 21 jury unanimously find from the evidence beyond a 22 reasonable doubt that the answer to Special Issue No. 1 23 is Yes." Signed by the foreperson of the jury. 24 "Special Issue No. 2: We, the jury, 25 unanimously find that the answer to Special Issue No. 2</p>	<p style="text-align: right;">78</p> <p>1 this your verdict? 2 JUROR NEIU: Yes, sir. 3 THE COURT: Juror No. 5, Dolores Lewis, is 4 this your verdict? 5 JUROR LEWIS: Yes, sir. 6 THE COURT: Juror No. 6, Kyle Reiss, is 7 this your verdict? 8 JUROR REISS: Yes, sir, it is, Your Honor. 9 THE COURT: Juror No. 7, James Ebbs, is 10 this your verdict? 11 JUROR EBBS: Yes, sir. 12 THE COURT: Juror No. 8, Jennifer Munroe, 13 is this your verdict? 14 JUROR MUNROE: Yes, sir. 15 THE COURT: Juror No. 9, Shannon Polk, is 16 this your verdict? 17 JUROR POLK: Yes, sir, it is. 18 THE COURT: Juror No. 10, Stacy Holly, is 19 this your verdict? 20 JUROR HOLLY: Yes, sir. 21 THE COURT: Juror No. 11, Bruce Nystrom, 22 is this your verdict? 23 JUROR NYSTROM: Yes, sir. 24 THE COURT: And Juror No. 12, Patricia 25 Proehl, is this your verdict?</p>
<p style="text-align: right;">77</p> <p>1 is No." Signed by the foreperson of the jury. 2 "We, the jury, return in open court the 3 above answers to the special issues submitted to us and 4 the same is our verdict in this case." 5 Signed by the foreperson of the jury. 6 Does either side desire to have the jury 7 polled as to their answers to these special issues? 8 MS. CAMERON: We do not, Your Honor. 9 MR. LOPER: We would, Your Honor. 10 THE COURT: Ladies and gentlemen of the 11 jury, the Code of Criminal Procedure requires that when 12 a party asks that the jury be polled as to their 13 verdict, that I call each of your names individually 14 and you answer "Yes" or "No" to the question: Is this 15 your verdict? 16 So, we'll begin with Juror 1, Joann 17 Hunter, is this your verdict? 18 JUROR HUNTER: Yes, sir. 19 THE COURT: Juror No. 2, Charles Jenkins, 20 is this your verdict? 21 JUROR JENKINS: Yes, Your Honor. 22 THE COURT: Juror No. 3, Donna Boswell, is 23 this your verdict? 24 JUROR BOSWELL: Yes, sir. 25 THE COURT: Juror No. 4, Bonnie Neiu, is</p>	<p style="text-align: right;">79</p> <p>1 JUROR PROEHL: Yes, it is. 2 THE COURT: Thank you. The jurors have 3 been polled and it's 12 answers of "Yes." 4 Ladies and gentlemen, at the beginning of 5 this trial I gave you certain instructions about not 6 discussing this case, not looking into any evidence 7 about this case, any news reports. I'm about to 8 release you from those instructions with the thanks of 9 this Court. And you are free to look at any articles 10 about the case, discuss the case with anyone you 11 choose. The other side of that coin is you're free not 12 to discuss the case with anyone if that is your choice. 13 Generally at this time I would ask the 14 State and Defense if they have a brief statement they'd 15 like to make to the jury and I'll afford you that 16 opportunity at this time, if you would like. 17 MS. CAMERON: Thank you, Your Honor. 18 On behalf of the Galveston County District 19 Attorney's Office, all of the citizens of Galveston 20 County with whom you all represent and the memory of 21 Alijah Kohberger, I thank you for your verdict. 22 THE COURT: Thank you. Does the Defense 23 desire to make any statement? 24 MR. LOPER: We don't have a statement, 25 Your Honor.</p>

80

1 THE COURT: Thank you.
2 All right. Ladies and gentlemen, I'm
3 about to send you back to the jury room. I will be
4 meeting with you for a few minutes before you are
5 released. At this time you are excused.

6 (Recess taken)

7 (Open court, Defendant present)

8 THE COURT: Cause No. 08CR0333, the State
9 of Texas versus Travis James Mullis. I'm about to sign
10 a conviction, a judgment of conviction by a jury,
11 capital murder. Date entered March 21st, 2011. The
12 offense for which the Defendant is convicted is capital
13 murder. The jury has answered the special issues in a
14 way that will result in the death penalty being
15 imposed.

16 Mr. Mullis is present with his attorneys
17 and I'll ask the question of you at this time,
18 Mr. Mullis. Do you know of any legal reason why this
19 judgment should not be signed and carried out at this
20 time?

21 THE DEFENDANT: No, sir.

22 THE COURT: That is the order of the
23 Court. You're remanded to the custody of the Sheriff
24 to complete this sentence. I notice and will note for
25 the record that a pauper's oath for the appeal and a

81

1 notice of appeal have been signed by Mr. Mullis; is
2 that correct?

3 MR. LOPER: Yes, Your Honor. We'll also
4 give oral notice of appeal on his behalf.

5 THE COURT: Okay. Anything further from
6 the State or Defense at this time?

7 MS. CAMERON: Nothing further from the
8 State.

9 MR. LOPER: Judge, we just had a question.
10 We don't know if that form that is prepared will show
11 this or we need to make some oral request of the Court
12 that our services would be terminated so he can be
13 appointed qualified certified appellate counsel.

14 THE COURT: I will certainly grant that
15 motion. I think because of the gravity of the case, it
16 would be wise to put that in writing and I'll sign it
17 and this information will be forwarded to the Court of
18 Criminal Appeals for appointment of appellate counsel
19 as soon as that can physically be done.

20 MR. LOPER: We'll get that taken care of,
21 Judge.

22 THE COURT: All right. This Court will
23 stand in recess. Thank you.

24 (Conclusion of the proceedings)

25

82

1 REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS *

3 COUNTY OF GALVESTON *

4

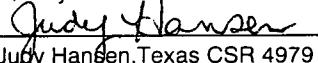
5 I, Judy Hansen, Official Court Reporter in and for
6 the 122nd District Court of Galveston County, State of
7 Texas, do hereby certify that the above and foregoing
8 contains a true and correct transcription of all
9 portions of evidence and other proceedings requested in
10 writing by counsel for the parties to be included in
11 this volume of the Reporter's Record, in the
12 above-styled and numbered cause, all of which occurred
13 in open court or in chambers and were reported by me.

14 I further certify that this Reporter's Record of
15 the proceedings truly and correctly reflects the
16 exhibits, if any, admitted by the respective parties.

17 WITNESS MY OFFICIAL HAND this the 14th day of
18 October, 2011.

19

20 /s/Judy Hansen

21 
22 Judy Hansen, Texas CSR 4979

23 Expiration Date: 12/31/2012
Official Court Reporter
122nd District Court
Galveston County, Texas
Galveston, Texas

24

25